



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON, D.C. 20370-5100

SMC  
Docket No: 06813-00  
30 November 2000

SSGT [REDACTED] USMC  
[REDACTED]  
[REDACTED]

Dear Staff Serge [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 5 October 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosure



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1610

MMER/PERB

5 OCT 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF  
SERGEANT [REDACTED] USMC

Ref: (a) SSgt. [REDACTED]s DD Form 149 of 31 May 00  
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 4 October 2000 to consider Staff Sergeant [REDACTED]'s petition contained in reference (a). Removal of the fitness report for the period 990612 to 990909 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that subparagraph 3009.2a(2)(a) of reference (b) stipulates that a first-time alcohol-related incident should be reported as derogatory material when the next reporting occasion becomes due. It is his belief that since this was his first and only incident, it should have been included in his Annual (AN) fitness report vice a "Directed by the Commandant" (DC) report. He states this was initially accomplished; however, it was later determined to be incorrect. Hence, the annual report was never submitted; instead the reporting period was broken down into two occasions (DC and AN). To support his appeal, the petitioner furnishes his own statement and copies of the reports prepared for the inclusive period of 990612 to 991231.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Succinctly stated, the petitioner has misinterpreted the guidance contained in subparagraph 3009.2a(2)(a) of reference (b). This provision applies when the **commander** of the Marine reported on disposes of the criminal allegations resulting from the alcohol-related incident via a forum **other than NJP, courts-martial, or administrative separation**. Since this incident was **not disposed of by the petitioner's commander**, the foregoing provisions simply do not apply in this case.

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b. Since the petitioner was convicted in civil court for an offense/closely related offense that **could** be grounds for a punitive discharge per the Manual for Courts-Martial, a "DC" report was required and correctly submitted. In this regard, the Board invites attention to subparagraphs 3004.2c(1), 4003.6c(1), and 4003.6c(2)(b)(1) of reference (b).

c. The Board observes that regardless of whether the incident was included in a "DC" or an "AN" report, the uncontroverted matter of fact is that the conviction occurred.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of Staff Sergeant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]  
Chairperson, Performance  
Evaluation Review Board  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps